IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3234 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD.

Versus

GUJARAT JAL SAMATTI VIKAS NIGAM KAMDAR MAHA SANGH,

Appearance:

1. Special Civil Application No. 3234 of 1986

MR DG CHAUHAN for Petitioner

MR GM AMIN for Respondent No. 1

MS SHRUTI TRIVEDI, AGP for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 15/04/2005

C.A.V. JUDGEMENT

1. Gujarat Water Resources Development Corporation

Limited (hereinafter referred to as "Corporation"), petitioner, have filed present petition under Article 227 of the Constitution of India, before this Court challenging the judgment and award dated 4th March, 1986, passed by the Industrial Tribunal ("the tribunal" for short), Ahmedabad in Reference (I.T.) No.693 of 1980.

1.1 The tribunal by its impugned judgment and award has held that, as regards demand for fixation of working hours and overtime, it would be fair enough if the workmen of the Corporation are given these benefits on the same lines as in the Gujarat Minimum Wages Rules, 1961 (hereinafter referred to as "the said Rules"). The tribunal also held that the benefits of working hours of the workmen in the tube wells shall be on same limes as in the said Rules particularly Rule 24. The tribunal further held that the overtime shall be paid at double the rates of wages on the same lines as provided under the said Rules particularly under Rule 25. The said overtime shall be paid to all workmen with retrospective effect from 1.1.1981. The tribunal further held that the workmen in the tube wells should be given atleast four national and festival holidays with pay. The tribunal further held that the workmen is required to work on that day due to any reason, they shall be given a compensatory off for that day falling within the permissible limit of continuous work in addition to weekly off.

2. The facts giving rise to this petition are as under:

2.1 The petitioner Corporation is a Government company within meaning of Sec.617 of the provisions of the Companies Act, 1956. It was established to develop, to harness and energise tubewells in the State of Gujarat for agriculture purposes. The petitioner is engaged in the activities of drilling and operating tubewells and constructing lift irrigation schemes in the State of Gujarat.

2.2 It has been further stated that the concerned pump operators were originally government servants and then treated as the permanent employees of the District Panchayat. Thereafter, the State Government issued Notification dated 8.6.1978 issued by Secretary, Government of Gujarat, Public Works Department, and the workers of tubewells so far as it pertains to operation and maintenance was transferred to the respective District Panchayats was placed under the control of the Corporation with a view to improve the utility etc. was

under consideration of Government. They were permanently transferred to the petitioner Corporation. They are regular/permanent employees of the corporation. Their service conditions are governed under the Rules and Regulations, Circulars, Resolutions and Notifications issued by the State Government from time to time which is applicable to the Corporation from time to time.

BACKGROUND OF THE MATTER:

3. It may be noted that earlier one Chauhan Dadusinh Rupsinh and others, petitioners, have filed a petition before this Court being Special Civil Application No.3105 of 1980 against the respondent Corporation and others with a prayer that this Court may issue a writ of mandamus or any other appropriate writ, order or direction, calling upon the respondents to fix working hours of employees and call upon to grant Sundays and public holidays as holidays, and also to direct the respondent to pay the amount for the extra work done by the employees. The said petition was filed on 21st October, 1980.

3.1 It may be noted that in that matter ultimately heard by this Court and this Court (Coram: P.D.Desai, J. (as he was then)) was pleased to pass order on 24.12.1980 as under:

> "The dispute herein between the employees and the first respondent-Corporation as to conditions of service is of such a nature as could be appropriately resolved in the course of an industrial dispute. Under the circumstances, the Court suggested to the parties that they should agree to the reference of the dispute to the Industrial Tribunal. The parties having agreed to the suggestion, the Court suggested to the State Government to make a reference of the dispute to the Industrial Tribunal and the Government having considered the suggestion have agreed to refer the dispute to the Industrial Tribunal under Section 10(l) of the Industrial Disputes Act, 1947. A draft of the order proposed to be made by the State Government in that behalf has been produced and taken on record. In light of this development, Mr.Tripathi for Mr.Amin withdraws the petition. The petition stands dismissed as withdrawn."

3.2 Following the directions issued by this Court, the Government of Gujarat made a reference order dated

26th December, 1980, of the industrial dispute to industrial tribunal for adjudication of the industrial dispute as contained in the schedule appended with the order of reference to the following effect.

(a) Hours of work and overtime:
To fix up 8 hours of work for workmen working on tube-wells and to grant twice the rate for overtime work beyond the hours of work to the workmen.

(b) Weekly holiday, national and festival holiday:
The above workmen to be granted weekly holiday on Sunday and festival holidays.

3.2A The reference came to be registered as reference (I.T.) No. 693 of 1980.

PRESENT CONTROVERSY:

4. After that the Union raised industrial disputes raising following claim of demands on 20.4.1981 before tribunal:

(i) Hours of work and overtime: To fix up 8 hours of work for workmen working on tube wells and to grant double the rate of wages for the overtime hours beyond the normal working hours.

(ii) Weekly holiday, National and Festival holiday: The above workmen to be granted weekly holiday on Sundays and Festival holidays.

4.1 Before the reference court, the petitioner Corporation filed reply at Exh.11 against the demand on 16th March, 1982. The Corporation has denied the said demand and stated that, when the pumps operators are required to work for more than eight hours a day, helpers are supplied, who work in place of operators as substitutes. It was stated that, neither the provisions of the Factories Act nor the provisions of the Bombay Shops and Establishment Act apply to the premises of a tube-well situated in the villages.

4.2 As regards demand No.2, it was stated that the operators working on tube-wells are given 12 days as casual leave, 30 days as privilege leave and 10 days as sick leave in a year and, therefore, no more festival holidays to be granted in this behalf.

4.3 As regards oral evidence, on behalf of workmen, one Rangatsinh Himmatsinh Chauhan, who was working in the tube-well operator was examined. He has tried to support the case of the workmen (Exh.12). He has also admitted that thereafter the work is done, the same has been mentioned in the register. Another witness Dadusinh Rupsinh Chauhan was examined at Exh.21 also workman in the Corporation. He has also stated that the water pump does not work for more than 12 hours a day. Next oral witness Ashokkumar Somchand Shah was examined at Exh.25. He is a General Secretary of the Union. He has admitted that the Corporation had given quarters to the pump operators who were working on the site and other benefits as per Government rules are also to be given to the employees of the Corporation.

4.4 On behalf of the Corporation, one Harivadan Rajnibhai Yagnik Exh.26 has been examined. He is an Executive Engineer in the Ahmedabad Division. He has also stated that the register is mentioned showing the particulars of distribution of work.

4.5 It may be noted that the Corporation has produced voluminous documentary evidence by the separate list where the rules regarding operators, letter given by Corporation to its employees. The Corporation has also produced register at Exh.22 showing the details of work by workmen from time to time. The Corporation has also produced register at Exh.23 and other correspondence ensue between the workmen and the Corporation. The Corporation has also filed documentary evidence to show that the workmen had to work in this behalf. The Corporation has also produced the details of workmen who have worked from time to time in tube wells and also the details of persons who have worked on wells namely operator, bit clerk, section officer (civil), section officer (Mechanical & Electrical). The extracts of the report of the Gujarat State Second Pay Commission, Volume - II, Part-1.

4.6 The Corporation led evidence to prove that the concerned pump operators are not working more than 8 hours. It was further proved that, some time they are working less than 8 hours and they are not entitled for any overtime wages as claimed for.

Finding of the Tribunal:

4.7 The tribunal after appreciating the oral and documentary evidence on record held as under:

(i) The working of the tube wells which depends on the power supply and the demand for water is not regular. The workmen who operate the tube-wells have some time to work more than 8 hours and some time less than 8 hours. On some days, the pump is not worked.

(ii) Their working hours are not fixed and looking to the nature of work, it is difficult to fix actual timings.

(iii) Though employment in drilling operation and mainteance of tubewells has been added to the schedule to the Act by Govt. Notification dated 26.5.77, however till date minimum rates of wages for workmen in this employment have not been fixed and as such, the provisions of the Minimum Wages Act, and the Rules do not currently apply.

4.8 After holding this, the tribunal has further held as under:

(i) working hours of the workmen in the tube-well shall be on the same line as in the Gujarat Minimum Wages Rules, 1961 (Rule 24).

(ii) Relievers should be appointed whenever the working hours exceeds the number prescribed.

(iii) overtime shall be paid at double the rate of wages on the same lime as provided under the Gujarat Minimum Wages rules, 1961 (Rule 25).

(iv) the overtime shall be paid with retrospective effect from i.e. 1.1.1981 to all employees.

(v) directed to give weekly day of rest on the same line as is provided under the Minimum Wages Rules, 1961. (Rule 23).

(vi) workmen shall be given at least 4 National and Festival holidays with pay.

(vii) the workmen shall be given compensatory off for the day if they work on holiday; they shall be paid double the wages for that day.

4.9 Being aggrieved and dissatisfied with the aforesaid judgment and award of the tribunal, the petitioner has filed present petition on 17.6.86 under

Article 227 of the Constitution of India.

Preliminary contention of Mr.Gopinath Amin, learned advocate for the respondent before the main contention raised by Mr.Chauhan, learned advocate on behalf of the petitioner:

5. Before learned advocate Mr.Chauhan submitted his contention on merits of the matter, Mr.G.M.Amin, learned advocate for the respondent has raised a preliminary contention that, in this matter, this Court exercising the powers under Article 227 of the Constitution of India, and therefore this Court has very limited jurisdiction, and if there is an error of fact or some error of law which is not error apparent on the face of the record, this Court may not interfere with the discretionary jurisdiction of the tribunal and, therefore, the writ petition filed by the Corporation under Article 227 of the Constitution of India is not maintainable.

5.1 The learned counsel has relied upon the judgment of the Hon'ble Apex Court in the case of Ouseph Mathai and others Vs. M.Abdul Khadir reported in JT 2001(9) SC 517 particularly paras 4, 7 and 11 which reads as under:

> "It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact, power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave justice to any party.

"..... Exercise of such a power may be necessary if it is shown that grave injustice has been done to a party and the case was a fit case where the High Court should have exercised the extraordinary discretionary power in favour of the defaulting party."

Submission of Mr.Chauhan, learned advocate for the petitioner on preliminary contention of Mr.Amin:

6. As against this preliminary contention raised by Mr.G.M.Amin, learned advocate for the respondent, Mr.Chauhan, learned advocate for the petitioner has made following submissions:

6.1 The award given by the tribunal is beyond the terms of reference. The tribunal has ignored the terms of reference. The tribunal has exceeded its jurisdiction and granted relief retrospectively with effect from 1.1.1981. Thus, the tribunal has travelled beyond the terms of reference and granted relief and therefore also the petition under Article 227 of the Constitution is maintainable at law.

6.1A (i) The Hon'ble Supreme Court in the case of Gujarat Mineral Development Corporation vs. P.H.Brahmbhatt reported in AIR 1974 SC 136, para 11 has held that an appellate court or a court having jurisdiction to entertain petitions challenging the verdict will not hesitate to interfere with findings of fact where there has been an illegality or an irregularity of procedure, or a violation of the principles of natural justice, resulting in the absence of fair trial or where there has been a gross miscarriage of justice, or where the tribunal has spoken in two voices and has given inconsistent and conflicting findings, or where the findings are vitiated by error of law or where the conclusions reached by the courts below are so patently opposed to the well-established principles as to amount to miscarriage of justice or where the finding is not supported by any legal evidence and is wholly inconsistent with the material produced on the record, or where the High Court or the tribunal below, committed a serious error in not examining evidence on a central issue with the care which it deserved.

(ii) Similar view has been taken in the case of Savita Chemicals (P) Ltd. v. Dyes and Chemicals Union reported in (1999) 2 SCC 143, para 19; Estralla Rubber v. Dass Estate (P) Ltd. reported in (2001) 8 SCC 97 para 6.

Finding of the Court on Preliminary Issue:

7.0 "Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of errorneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was errorneous but it will be open to the High Court in exercise of the powers under Article 227 of the Constitution to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence of upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse.

{Re: In the case of Achutananda Baidya vs. Prafullyakumar reported in (1997) 5 SCC 76, paras 10 and 11.}

7.1 I have considered the facts and circumstances of the case and also aforesaid decision of the Hon'ble Apex Court. In my view the tribunal has embarked upon its wrong view about the terms of reference and on wholly illegal and errorneous approach. The tribunal was under complete misconception of law and facts. The tribunal has wrongly applied the provisions of Minimum Wages Act, rules and notification issued therein. The tribunal has not properly appreciated the oral and documentary evidence on record. The tribunal ignored the well-settled principles about the limitations of the powers of the tribunal in adjudicating the dispute, ignoring the statutory law and the law laid down by the Hon'ble Supreme Court on the subject, made out altogether a new case and granted entirely different reliefs which

were neither claimed for nor within the terms of reference and, therefore, this Court is of the view that it is entitled to exercise the powers under Article 227 of the Constitution of India and, therefore, the preliminary contention raised by Mr.Amin is rejected and the contention of Mr.Chauhan is required to be accepted.

8. Contention of Mr.Chauhan on merits of the matter:

8.1 First Contention:- The Award given by the Tribunal is beyond the terms of reference:

8.1A The learned counsel submitted that, in any view of the matter, the award of the tribunal is beyond terms of reference in view of Sec.10(4) of the Industrial Disputes Act. The jurisdiction of the tribunal has been limited by the provisions of Section 10(4) of the Industrial Disputes Act, to the point specified in the order of reference. Sec.10(4) reads as under:

> "Where in an order referring an industrial dispute to (a Labour Court, Tribunal or National Tribunal) under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, (the Labour Court or the Tribunal or the National Tribunal, as the case may be), shall confine its adjudication to those points and matters incidental thereto".

8.1B The learned counsel has heavily relied upon the judgment of the Hon'ble Apex Court in the case of M/s.Firestone Tyre and Rubber Company India (P) Ltd. Vs. Workmen, reported in AIR 1981 SC 1626, particularly, para 9 on page 1628 and 1629 the Hon'ble Apex Court has observed like this:

> "In this case the points of dispute were specified in the schedule to the order of reference, and the Tribunal was therefore required to confine its adjudication to those points and matters that were incidental to them. From a reading of demands 1(A) & 1(B) as a whole it is clear that the demand for reinstatement in respect of both groups of workmen as made arises on the alleged invalidity of the action taken by the management in dismissing these workmen. The issue of unfair labour practice or discrimination by reason of subsequent reinstatement on a permanent basis of some and not all the 25 workmen was not a matter referred to the Tribunal

for adjudication, nor it can be said to be in any way connected with or incidental to the right of reinstatement claimed by the 101 workmen from the date of their dismissal. The fairness of subsequent absorption of some workmen is a matter quite irrelevant for judging the validity of the earlier dismissal of these workmen along with others; it is an entirely separate and independent question. The Tribunal also did not frame an issue on the alleged discrimination. That being so, we think the Tribunal travelled outside its jurisdiction in recording a finding of unfair labour practice and discrimination."

8.1C In support of the same, the learned counsel has relied upon the following judgments:

(i) Pottery Mazdoor Panchayat Vs. Perfect Pottery Company Ltd. (1979) 3 SCC 762, paras 11 and 16.

(ii) Union of India Vs. Shantiram Ghosh, 1989 Suppl.(1) SCC 68, para 8.

(iii) Gorden Woodroffe Agencies (P). Ltd. Vs. P.O., Principal Labour Court, (2004) 8 SCC 90 paras 12 and 13.

(iv) Rhone Poulenc (India) Ltd. v. State of U.P. (2000) 7 SCC 675, para 7.

8.2 Second Contention:- The award of the tribunal awarding overtime from 1.1.1981 i.e. with retrospective effect is bad in law in any view of the matter:

8.2A The learned advocate further submitted that in any view of the matter when the tribunal has awarded overtime from 1.1.1981, the same is not only beyond the terms of reference, the tribunal has thus exceeded its jurisdiction and hence, the said directions is liable to be set aside in the interest of justice. It has been further submitted that the tribunal is the creature of the statute and therefore its jurisdiction is confined by the Act.

8.2B The same is also bad in law on the ground that there is no claim in the statement of claim, no pleading, no oral or documentary evidence led by the workmen, no argument at the time of hearing of reference application and no reasons have been recorded in support of its

directions.

8.2C The learned counsel has relied upon the judgment of Calcutta High Court in the case of Workmen of Bengal Electric Lamp Works Ltd. Vs. Bengal Electric Lamp Works Ltd. and others reported in 1958(1) LLJ 571 Judgment of Calcutta High Court. After quoting Sec.10(4), the Hon'ble Calcutta High Court has held on page 572 as under:

> "It is, therefore, clear from the words used in the body of the Act that the tribunal has jurisdiction to adjudicate only on the points of dispute specified by the Government. The tribunal has no other jurisdiction. The language is clear by the use of the expression, "confine its adjudication to these points."
>
> "The expression "and matters incidental thereto" appearing in S.10(4) of the Act includes incidental matters. Retrospective matters are not incidental matters. These expressions in the section are to be read prospectively unless the actual terms of reference indicate either expressly or by the most compelling and necessary implication any other conclusion giving jurisdiction to the tribunal to pass orders retrospectively. Normally the ordinary principle of construction should be followed and that is that the prospective interpretation unless the retrospect is expressly or by necessary implication indicated."

8.3 Third Contention:- The award of the tribunal giving retrospective effect is also bad in law on the ground that the tribunal does not give any reasons in support of the same.

8.3A The learned advocate has further submitted that, in any view of the matter, the award of the tribunal is also bad in law on the ground that, while arriving at the said conclusion, the tribunal did not give any reasons and, therefore, the award is also liable to be quashed and set aside.

8.3B The learned advocate has relied upon the judgment of the Hon'ble Apex Court in the case of S.N.Mukherjee Vs. Union of India reported in (1990) 4 SCC 594, particularly paras 35, 36, 37 and 40 and thereafter the Hon'ble Apex Court held that, once the order of the tribunal has without reasons, the same is liable to be

quashed and set aside.

8.4 Fourth Contention: The provisions of Minimum Wages Act as well as rules are not applicable to the Corporation.

8.4A The Corporation carried on activity of supplying water to the farmers in the command areas of tube-wells and lift irrigation schemes for the irrigation purposes at the subsidised rates. These rates are advised and fixed by the Government of Gujarat which are less than the actual cost that the petitioner corporation has to bear for the same. The reason for supplying water at the subsidised rates are to help the small and marginal farmers and economically backward and down-trodden farmers.

8.4B The learned advocate relied upon the Circular dated 9.10.1985 showing the set up for tubewells at the relevant time. It was also stated that in the year 1990 there were in all about 2949 tubewells, but thereafter due to financial crisis, the tubewells have been substantially reduced. The details of the tubewells operated were as under:

Year	Number of tubewells in operation
1990	2949
1995	2488
2000	1293
2003	885
2004	462

8.4C The learned advocate appearing on behalf of the Corporation has submitted that the pay scale of the concerned pump operators are fixed under the Gujarat Civil Services (Revision of pay) Rules made in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. Moreover, the pay scale of the respondents employees are revised from time to time under the said ROP Rules. At present under the ROP Rules, 1998, the pay scale of the pump operators is revised to Rs.3050-4590. Moreover, the concerned pump operators are also availing other benefits at par with the Government employees.

(i) Earned Leave 30 days.
(ii) Medical Leave 20 days.
(iii) Casual Leave 12 days.
(iv) All Public Holidays
(v) Medical Allowance Rs.100/- per month,

Note:
Reimbursement of Actual Medical expenses as per Rules.

(vi) Leave Travel Concession.
(vii) Home Town Travel Allowance.

Note:
All other benefits available to the Government employees.

8.4D It was further submitted that the pump operators are working only during working hours with the help of the helpers. Their pay is not governed under the Minimum Wages fixed under the Minimum Wages Act. The pump operators are in regular pay scale and therefore they are not entitled for any overtime wages as claimed for. It was further submitted that the Corporation is incurring heavy losses since last many years and it is not possible for the Corporation to bear such huge financial burden. It was further submitted that the Corporation is discharging welfare activities on behalf of the State Government.

8.4E It was further submitted that the function of operating tubewell and supplying water therefrom is depending upon the seasons of the year. That in a year, there are in all three seasons, i.e. kharif, rabi and hot season for the Indian farmers. The kharif season is usually starts from 21st June to 20th October. While Rabi season starts from 21st October to 20th February and Hot season starts from 21st February to 20th June. In Monsoon, i.e. in Kharif, there is hardly any demand for water. During this period of four months, practically the operators have no work. During this period, even though the operators have no work, they are continued in service of the petitioner Corporation. During the time of frequent power-cuts also, the tube-wells are not operated and the operators have no work. In recent times in the rural sector, power is hardly available for 8 to 12 hours. Over and above this, the operation of tube-wells also depend upon mainly two factors, i.e.

(1) Farmer's demand; and
(2) Area to be supplied with water.

8.4F The learned advocate further submitted that the tribunal has held that the working hours of the workmen working in the tube-well shall be on the same line as in the Gujarat Minimum Wages Rules, 1961. The tribunal further held that the overtime shall be paid at double the rate of wages on the same line as provided under the

Gujarat Minimum Wages Rules, 1961.

8.4G The learned advocate further submitted that the aforesaid finding of the tribunal is contrary to law, facts and evidence on record. For that purpose he has relied upon the provisions of Minimum Wages Act, particularly sec.2(g) which provides "scheduled employment" which means an employment specified in the Schedule, or any process or branch of work forming part of such employment.

8.4H The learned advocate has also relied upon Sec.3 of the Act which provides fixing of minimum rates of wages. Sec.3(a) proviso provides as under:

> "(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under Section 27:
>
> Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole state, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof."

8.4I The learned advocate has also relied upon Section 27 of the Minimum Wages Act, 1948, which reads as under:

> "Sec.27 Power of State Government to add to Schedule:- The appropriate Government after giving by notification in the official Gazette not less than three months notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly."

8.4J Section 28 provides power of Central Government to give directions. Section 29 provides power of the Central Government to make rules. Section 30 provides power of appropriate Government to make rules. Sec.30(d) provides the time and conditions of payment of, and the deductions permissible from wages. Clause (f) provides

for a day of rest in every period of seven days and for the payment of remuneration in respect of such day. Clause (g) provides prescribe the number of hours of work which shall constitute a normal working day. The learned advocate further relied upon the schedule attached to the Act.

8.5 The learned counsel has further stated that, in view of exercise of this power, the Government of Gujarat has framed Gujarat Minimum Wages Rules, 1961

8.5A Chapter IV provides for computation and payment of wages, hours of works and holidays.

8.5B Rule 20 provides mode of computation of the cash value of wages in kind and of concessions.

8.5C Rule 21 provides for time and conditions of payment of wages and the deductions permissible from wages.

8.5D Rule 22 provides for publicity to the minimum wage fixed under the Act.

8.5E Rule 23 provides for weekly day of rest.

8.5G Rule 24 provides for number of hours of work which shall constitute a normal working day.

8.5H Rule 25 provides extra wages for overtime.

8.5I The learned advocate further submitted that in view of Section 30 of the Act and in view of the schedule and in view of that the employment in drilling operation and maintenance of tube wells has been added to Part I of the Schedule to the Minimum Wages Act, 1948 by Government of Gujarat, Labour, Social Welfare and Tribal Development Department Notification dated 26.5.1977, this employment is added to the schedule of employment with effect from 2.6.1977. However, the learned advocate submitted that till date, as per the said notification, the minimum rates of wages for workmen in the employment of the Corporation have not been fixed by the Government. The learned counsel further submitted that the Government has not issued notification under Sec.3 of the Act, and as such the provisions of the Act and the Rules do not currently apply in absence of the notification issued by the Government as per Sec.3(27) of the Act.

8.5J The learned advocate has further submitted that this fact has been admitted and even the tribunal in para

8 of the order also observed "however, till date the minimum rates of wages for workmen in this employment have not been fixed and as such the provisions of the Act and the Rules do not currently apply." The learned advocate further submitted that against this finding, the workmen has not filed any petition before this Court and not challenge this finding and, therefore, this finding of the tribunal is binding on the workmen in this behalf, therefore, this finding cannot be now challenge by the respondent in the present petition.

8.5K The learned advocate further submitted that it is an admitted fact that the provisions of Gujarat Civil Services Rules (Revision of Pay) Rules ("ROP Rules) are applicable to petitioner Corporation. Once that is so, the provisions of Minimum Wages Act and the Rules will not apply.

8.5L In support of the aforesaid contention, the learned counsel has relied upon the judgment of the Hon'ble Apex Court in the case of Municipal Council Hatta Vs. Bhagatsingh and others reported in (1998) 2 SCC 443 particularly in para 3 the Hon'ble Apex Court considered Sec.14 of the Minimum Wages Act and in para 4 and 5 the Hon'ble Apex Court observed as under:

"There is also an amendment to Section 14 by addition of sub-section (1-a) under the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961 being Act 23 of 1961. Sub-section (1-a) which is inserted in Section 14 entitles the State Government by notification to fix the limit for overtime work in a scheduled employment. This provision is not directly relevant. To claim overtime under Section 14, the following conditions must be fulfilled by an employee (1) the minimum rate of wages should be fixed under the Minimum Wages Act, 1948; and (2) such an employee should work on any day in excess of the number of hours constituting a normal working day. Therefore, overtime under Section 14 is payable to those employees who are getting a minimum rate of wage as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime under Section 14 would become payable. In the present case the respondents cannot be described as employees who are getting a minimum rate of wages fixed under the Minimum Wages Act, 1948. They are getting much more and that too under the Madhya Pradesh Municipal Services (Scales of Pay and Allowances)

Rules, 1967. Therefore, Section 14 has not application to them. We have not been shown any other provision under which they can claim overtime."

"The application under Section 22 of the Minimum Wages Act, is, therefore, misconceived. The respondents seem to have proceeded on the basis that because employment under any local authority is listed as Item 6 in the Schedule to the Minimum Wages Act, 1948 they would automatically get overtime under the said Act. Section 14, however, clearly provides for payment of overtime only to those employees who are getting minimum rate of wage under the Minimum Wages Act, 1948. It does not apply to those getting better wages under other statutory rules."

8.5M The learned counsel has further submitted that, there is no provisions under the Gujarat Civil Services (Revision of Pay) Rules or other Rules regarding granting overtime wages to the concerned pump operators and therefore they are not entitled for any overtime wages.

8.5N The learned counsel has further submitted that, once the provisions of Minimum Wages Act are not applicable, naturally the rules were also not applicable, and in view of the same, the findings and conclusions arrived at by the tribunal that provisions of Minimum Wages Act and Rules apply to Corporation is perverse and bad in law.

8.6 Fifth Contention: While awarding overtime and wages the tribunal ought to have consider the financial position of the Corporation.

8.6A The petitioner - Corporation is supplying water to the agriculturists at the rates which are less than the actual cost that the petitioner - Corporation has to bear. Thus, the petitioner - Corporation is carrying on its activities not for profit but for the development of the agricultural sector of the State. The Government is giving subsidy to the petitioner - Corporation for the loss sustained by the petitioner - Corporation, but even after receipt of the subsidy from the State, the petitioner - Corporation is incurring huge losses. The loss sustained by the petitioner - Corporation during the last five years before receipt of the subsidy from the Government and after receipt of the subsidy are stated hereinbelow for perusal.

Year	Loss before Government subsidy (Rs. in lakhs)	Loss after Government subsidy (Rs. in lakhs)
1980-81	278.10	78.10
1981-82	295.14	95.14
1982-83	577.71	317.71
1983-84	696.30	396.30
1984-85	710.80	384.55

8.6B It has been further stated that the Corporation is also incurring further losses in this behalf. The petitioner - Corporation has at present 2864 tubewells functioning. The Corporation has opened Divisions and Sub-divisions for construction and maintenance of tubewells. In the sub-divisions at Dehgam, there are 107 tubewells functioning. The tubewell operator is operating the tubewell for supplying water to the farmers in the command area of tubewell. The petitioner Corporation provides his residence at the site of the tubewell, water and light are supplied free to the operator. A tube-well operator of the petitioner Corporation enjoys certain benefits which are not stipulated under other Industrial Laws (i.e. Factories Act). The tubewell operators enjoy the benefits of the LTC, Medical Reimbursement etc. The provisions of leave are also liberal as compared to Factories Act, 1947.

8.6C The learned counsel has further stated that, notwithstanding the fact that the aforesaid position, in any view of the matter, if the award of the tribunal is confirmed, then there will be additional financial burden on the Corporation to the tune of Rs.16.00 crores and the recurring annual burden would be of Rs.3.00 crores.

8.6D It may be noted that, in this case, originally when the petition was filed, the State of Gujarat was not a party to the petition. However, the petitioner has sought amendment, and by the amendment granted by this Court on 7th October, 2004, the State of Gujarat has also been joined as party. It appears that, the petitioner has joined the State of Gujarat as party respondent only on the apprehension that, if this petition is dismissed, and if this Court confirmed the findings of the tribunal then, according to Corporation, there will be huge liability of the Corporation and, therefore, the petitioner filed civil application on the ground that, if in any event, the Corporation will not fulfill the

obligation, this Court may direct the State Government to fulfill their obligation and, therefore, for that purpose, the Corporation has joined the State of Gujarat as a party respondent in this behalf.

9. Ms.Shruti Trivedi, learned AGP, who is appearing on behalf of the Government, has also supported the contention of Mr.Chauhan, and she has also adopted the arguments of Mr.Chauhan in connection with the maintainability of the petition.

9.1 The learned AGP has supported the contention of the Corporation. The learned AGP has further stated that, even if this Court comes to a conclusion and dismissed the petition, in any view of the matter, the Corporation is a local entity, and this Court may not fasten the liability on the State Government, because if the award of the tribunal is confirmed, then the State may have to incur a huge liability in this behalf. The learned AGP submitted that, when this Court confirmed the award of the tribunal, this Court may consider the financial position of the State Government as well as the Corporation while confirming the award of the tribunal.

9.2 The learned counsel for the State in support of their aforesaid contention has relied upon the judgment of the Hon'ble Apex Court in the case of A.K.Bindal and another Vs. Union of India and others reported in AIR 2003 SC 2189 particularly para 17 on page 2197 the Hon'ble Apex Court has observed as under:

> "... Since employees of Government Companies are not Government servants they have absolutely no legal right to claim that Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales."

9.3 The learned AGP has also relied upon the recent judgment of this Court reported in the case of Forum of Retired Officer/Employees of Gujarat State Financial

Corporation Vs. State of Gujarat reported in 2005(1) GLH 162 relevant para 23 on page 177.

"I also find force in the submission of learned Counsel Mr.K.M.Patel that if a pension scheme is to be introduced for the first time, financial capacity of the employer is a very valid consideration and this Court cannot give any direction to formulate a pension scheme without having regard to the capacity of the employer to absorb additional burden flowing therefrom. This is the consistent view taken by the Hon'ble Supreme Court in number of decisions. In addition to the decisions cited by Mr.Patel in this regard, namely AIR 1992 SC 789 (Delhi Development Horticulture Employees Union v. Delhi Administration), 2000(3) GLH 409 (Abad Dairy v. Manjibhai Dhanjibhai), the Hon'ble Supreme Court in the case of Officers & supervisors of I.D.P.C. v. Chairman & M.S. I.D.P.L. & ors. reported in 2003 (6) SCC p.490, has observed that financial capacity of the employer is an important factor for implementation of pay revision and sick Government company continuously incurring losses cannot be asked to implement the pay revision by directing the Government to weigh the additional expenditure involved. In the decision of the Hon'ble Supreme Court in T.N.Electricity Board v. R.Veerasamy & ors., reported in (1999) 3 SCC 414 also, the Apex Court was pleased to uphold the decision not to extent the benefit of the pension scheme to those employees who had retired prior to a certain date and observed that the financial constraints which were beyond the means of the Board were a valid reason for introducing the scheme prospectively."

10. Sixth Contention: The learned advocate further submitted that in any view of the matter the service conditions are applicable to the petitioner Corporation or governed by rules enacted under Article 309 of the Constitution of India, and therefore the provisions of Industrial Disputes Act will not apply.

10.A The learned counsel has submitted that the pay-scale of concerned pump operators are fixed under ROP Rules made in exercise of powers conferred by the proviso to Article 309 of the Constitution of India and, therefore, the pay scales are fixed accordingly and also

revised from time to time under the ROP Rules. The learned advocate further submitted that, the power under Article 309 deals with the field of recruitment and conditions of service of persons serving under the Union or a State enabling the appropriate Legislature to "regulate the recruitment and conditions of persons appointed, to public services and posts in connection with the affairs of the Union or of any State". To that extent, they govern the matter of adjudication of any dispute, irrespective of the fact whether it falls in schedule 2 or 3 or not, will prevail and the machinery devised in the rules will operate to the exclusion of the forums under the Industrial Disputes Act.

10.B In support of the said contention, the learned counsel has relied upon the Division Bench judgment of this Court in the case of State of Gujarat Vs. Saurashtra Mazdoor Sangh reported in 2004(2) GLH 50, particularly para 7.2, 7.3 and 7.4 of the said judgment and submitted that once the said rules are applicable, the industrial tribunal has no jurisdiction to consider the fixation of pay and fixation of scale in regard to the employees of the Corporation. However, he has relied upon para 8 on page 62 of the said judgment which reads as under:

> "If the rules framed under Article 309 of the Constitution are ignored and the Tribunal is authorized to change them in the above manner, then a startling unsconstitutional situation will arise by enabling the Industrial Tribunal to virtually exercise the power under Article 309 by changing the pay-fixation done under the rules made by the Governor or the President and by subjecting the power to regulate service conditions conferred by Article 309 on the Legislature and/or the President or the Governor, to Section 33(1) of the Industrial Disputes Act, which requires express permission in writing of the authority including Industrial Tribunal, before which any proceeding is pending, for altering service conditions under Article 309 to the prejudice of the workmen.
>
> ... It is clear from the provisions of Part XIV of the Constitution and the provisions of the Industrial Disputes Act that the Tribunal has no jurisdiction to adjudicate an industrial dispute in a manner that would be in conflict with the operation of the rules framed under Article 309 of the Constitution and it will have no

jurisdiction under Section 7A of the Industrial Disputes Act to affect the service conditions of the employees which are regulated by the rules made under Article 309 of the Constitution irrespective of the definition of "workman" or "employer" under the Industrial Disputes Act. The Industrial Tribunal can decide disputes relating to matters under schedule 2 or 3 only within the framework of the rules made under Article 309 of the Constitution and not dehors the rules even when the dispute referred to it may be between workman and his employer, as defined under the Act. The Tribunal, therefore, has acted beyond its jurisdiction in substituting the pay-scale of Rs.290-480 of the employees of the Government Press, Rajkot, which was prescribed under the Gujarat Civil Services (R.O.P.) Rules, 1975 by the higher pay-scale of Rs.360-560."

11. Contention of Mr.Gopinath Amin, learned advocate of the respondent:

11.1 Mr.Amin, learned counsel for the respondent has relied upon the affidavit-in-reply filed by one Shri Ashok Somchand Shah dated 29th October, 2004. The learned counsel submitted that, the tribunal has not travelled beyond the terms of reference. He has submitted that, earlier when the employees of the Union had filed writ petition being Special Civil Application No.3105 of 1980 in the case of Chauhan Dadusinh Rupsinh and others Vs. The Gujarat Water Resources Development Corporation before this Court, this Court by its order dated 24.12.1980 had disposed of the petition on the ground that this Court had suggested to the parties to make reference to the tribunal. The State had agreed to make reference to the tribunal and proposed draft order was produced before this Court, and that is how the reference was made and, therefore, the tribunal has passed the order as per the order of this Court and therefore the tribunal has not reached beyond the terms of reference. He submitted that, the tribunal has declared its award in terms of reference and, therefore, he has denied the contention of the petitioner in this behalf.

11.2 The learned advocate for the respondent has relied upon the evidence of one Govindbhai Bhavanbhai Pandya Exh.12, evidence of Ashokkumar Somchand Shah Exh.25, union leader and also evidence led by Corporation

by one Harivadan Rajubhai Yagnik Exh.26. He has also relied upon the register produced by the Corporation from time to time. He has also relied upon the findings of the tribunal and the record and submitted that the tubewells have worked for more than 8 hours and sometimes there is a drop but that is due to repairing and maintenance of the tubewells. Even in the rainy season for the crop of paddy, farmers have worked, therefore, to say that there is no pleading that the operators are given not more than 8 hours work.

11.3 The learned advocate further submitted that it was never the case of the petitioner Corporation that their tubewell operators were given more wages or better wages than the minimum wages. It was never pleaded either before this Court nor before the tribunal in their written statement or by way of leading any evidence. It was never stated before the tribunal that X is the minimum wages and the petitioner Corporation gives X + Y wages. Therefore, they are not entitled to minimum wages as provided in Minimum Wages Act. Even in the memo of present petition, there is no whisper about the payment of more wages than the minimum wages, therefore, the said argument is devoid of any merits.

11.4 The learned advocate further submitted that the petitioner Corporation is incorporated under the Companies Act as stated in the reply filed by the Corporation before the tribunal and certificate of incorporation was given on 7.5.1971, and therefore it was a company though it is owned and finance by State Government but the affairs of the petitioner Corporation is run under the provisions of the Indian Companies Act, therefore it cannot be said to be a State. He submitted that such arguments were raised in case of tubewell operators in the case of Patel Ishwarbhai Prahladbhai etc. Vs. The Taluka Development Officer and others reported in AIR 1983 SC 336 para 7 on page 338 and 339.

> "... Therefore, there can be no doubt that the tube-well operators concerned in these appeals are in scheduled employment under the Panchayats. The question is whether, being Government servants, employed under the local authority, they are not entitled to minimum wages and other benefits under the Act. "Employer" under the Act being "any person who employs whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum wages have been fixed under the

> Act", the Panchayat or Panchayats under which the Tube-well Operators concerned are employed in scheduled employment would be "employers" under the Act even though they are Govt. servants for under S.102(2) of the Gujarat Panchayats Act, 1961 a Secretary of a Gram Panchayat or Nagar Panchayat shall subject to the control of the Sarpanch or Chairman as the case may be, perform certain duties mentioned in clauses (a), (b), (c) and (d) to that sub-section and under sub-section (3) of that section the other servants of the Panchayats shall perform such functions and duties and exercise such powers under the Act as may be imposed or conferred on them by the Panchayat, subject to rules, if any, made in this behalf. We are, therefore, of the opinion that the Tube-well Operators concerned in these appeals, even though State Government servants, are employed in scheduled employment under the local authority or authorities and are consequently entitled to minimum wages and other benefits under the Act, it not being disputed that minimum wages have been fixed by the State Government in respect of Tube-well Operators generally though that benefit has not been extended to the Tube-well Operators concerned in these appeals."

11.5 After relying upon the said judgment, it was contended that the tubewell operators working in the panchayat were government employees and therefore they are given pay scale as per the rules and regulations of the Government. It is submitted that if the company gives pay scale in parity with the pay scale given by the other local authority, it does not mean that the company is a Government or a State and, therefore, the Minimum Wages Act is not applicable.

11.6 The learned advocate further submitted that the pay scale of the tubewell operators at the relevant time was Rs.90-110 and the service conditions are not governed under the Gujarat Civil Service (Revision of Pay) Rules. The said rules are applicable to the government employees and not to the employees of the petitioner Corporation, and therefore the rules which govern the employees they are entitled for pension. In the instant case, pension is not applicable to the employees of the petitioner Corporation, therefore also service conditions as laid down under the Gujarat Civil Services (Revision of Pay) Rules are not in fact applicable. The said rules are applicable to the government employees but by necessary

analogy if the same are paid it does not mean that the respondent employees are given better wages.

11.7 It was further submitted that the pay scale of tubewell operators mentioned at Rs.3050-4090 was not at all given to any of the operators in the year 1980-81 but the said facts are mentioned about the recommendations made by the 4th Pay Commission and it is to be given effect from 1998 but that too is not even made applicable to the operators in the petitioner Corporation. The tribunal has observed that the tubewell has worked for more than 8 hours continuously and they were not given any holidays and this point was also made at the time of filing writ petition before this Court. Medical leave, earned leave, casual leave mentioned are recently granted to the employees and not before that, therefore, in any case, the award declared by the tribunal does not require to be interfered with.

11.8 The learned advocate further submitted that, so far as demand is concerned, demand No.1 specifically states that "to grant double the rate of wages for overtime hours beyond the normal working hours". So the said terms of reference was specifically made to the petitioner Corporation. Even at the time of hearing before this Court it was stated earlier that it was known fact to the parties that reference was made with respect to fixation of working hours and payment of overtime. It was further submitted that the observations made by the tribunal are based on evidence on record and that cannot be disturbed. Even no contrary case is put forth by the petitioner Corporation before this Court or before the tribunal, therefore, the findings arrived at by the tribunal cannot be disturbed under Article 227 of the Constitution of India. The tribunal has rightly come to the conclusion that the working hours should be fixed according to law. One cannot exploit the workers at his own whims when the statutory body has fixed the working hours under the parameters of the statute. The issue about granting of minimum wages to the tubewell operators was already settled by the Hon'ble Supreme Court in the case of Ishwarbhai (supra).

11.9 The learned advocate further submitted that the working hours are rightly set up by the tribunal and the overtime should be paid double the rates is rightly observed by the tribunal. The tribunal has not granted retrospectively and further reference was made in the year 1980. If the reference is delayed, the employees cannot be deprived of payment of overtime. The tribunal has rightly observed that festival holidays should be

granted. It was also rightly observed that even one weekly holiday should be provided under Minimum Wages Act, and therefore the tribunal has rightly accepted the demand made by the Union in the award and no grievance can be made out. It was further submitted that the judgment of Hon'ble Apex Court in the case of S.N.Mukherjee Vs. Union of India reported in AIR 1990 SC 1984 is not at all applicable to the present set of facts. It was further submitted that the weekly holidays, public holidays, festival holidays etc. were never granted otherwise the union could not have approached before this Court in the year 1980. Even after the award was declared, it was not observed but recently holidays are granted, therefore to say that the holidays are granted is devoid of any merits.

11.10 The learned advocate submitted that the provisions of Minimum Wages Act and rules are applicable to the Corporation and the tribunal has also observed the same and therefore the said award is just, proper and valid and is based on the evidence of record and it does not require any interference. It was further submitted that tribunal has not exceeded its jurisdiction. He has relied upon the judgment in the case of M/s.Jaydip Paper Industries Vs. The Workmen reported in AIR 1972 SC 605 para 10 and para 13 on page 607 and 608.

"It may be recalled that it was during the pendency of the proceedings before the Tribunal that the notification by the Maharashtra Government fixing minimum rates of wages came into operation. The sub-section would make it clear that even after the fixation of minimum rates of wages by the appropriate Government under section 3 of the Act, it is open to an Industrial Tribunal adjudicating an industrial dispute relating to wages payable to the employees in a scheduled employment to fix minimum wages at higher or lower rates, if the dispute was pending at the time of fixation of minimum wages under S.3 of the Act. So it was open to the Tribunal to fix rates of minimum wages at rates higher than the rates fixed by the Government under section 3 of the Act. In other words, the Tribunal was not bound by the fixation of the minimum rates of wages by the Government under the provisions of S.3 of the Act and could fix higher rates as minimum wages in its award."

"In the light of the provisions of section 3(2A) of the Act, we hold that the Tribunal was not

bound by the rates of minimum wages fixed by the Government and that it was open to the Tribunal to fix rates of minimum wages to be paid to the workmen concerned in the dispute at figures higher than those fixed by the Government."

11.11 The learned advocate has relied upon the judgment of Hon'ble Supreme Court in the case of Airfreight Ltd. Vs. State of Karnataka and others reported in AIR 1999 SC 2459. In that case before the High Court the appellant - original petitioner filed petition for a declaration that the Notification dated 19th August, 1987 issued by the State Government in exercise of the power under Section 27 of the Minimum Wages Act fixing the minimum rates of wages payable to the categories of employees as specified in the said Notification for Item No.28, namely, "shops and commercial establishments" under the Act, was not applicable to the appellant-industry and also for setting aside the order dated 31st July, 1997 passed by the Labour Officer (the Competent Authority) under the Minimum Wages Act. In that case the Court held that the notification issued under the Minimum Wages Act was applicable to shops and establishments. Before the Hon'ble Apex Court it was also contended by the appellant that the appellant-company is paying total pay packet which is more than minimum wages prescribed under the Notification and, therefore, the Notification is not applicable and in any case, there is no violation of the said notification. However, the company is not bifurcating the basic wages and dearness allowance. In that context, in para 11 on page 2463 the Hon'ble Supreme Court considered earlier judgment in the case of Municipal Council, Hatta Vs. Bhagat Singh (supra) and observed as under:

"Mr.Cama, learned Counsel for the applicant relied upon the decision in the case of Municipal Council, Hatta Vs. Bhagat Singh, (1998) 2 SCC 443 : (1998 AIR SCW 1003 : AIR 1998 SC 1201 : 1998 Lab IC 298), for contending that where employees are getting better wages under the contract, the provisions of the Minimum Wages Act would not be applicable. In our view, the aforesaid decision is based upon the interpretation of Section 14 of the Act wherein the Court has observed that overtime under Section 14 is payable to those employees who are getting minimum rate of wages as prescribed under the Minimum Wages Act and does not apply to those getting better wages under other statutory rules. Payment of wages at the minimum rates is the

lowest limit and to pay the same is a statutory obligation. But, it does not prevent employer in paying 'fair' or 'living' wages. It would also depend upon other statutory or contractual obligations. In view of the aforesaid discussion, in our view, the contention of the learned counsel for the appellant that the Notification dated 19th August, 1987 would not be applicable to the appellant-Company is without any substance."

11.11A The Hon'ble Apex Court considered the provisions of the Minimum Wages Act on page 2467 and observed like this:

"... Once rates of minimum wages are prescribed under the Act, whether as all inclusive under Section 4(1)(iii) or by combing basic plus dearness allowance under Section 4(1)(i) are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same.

".. The Notification issued under the Act prescribing minimum wages applies to all kinds of shops and commercial establishments big or small - and that payment of more than prescribed minimum rates of wages is not relevant for deciding its applicability. It cannot be stated that as they are paying more than the prescribed minimum wages, the Act or the Notification would not be applicable. For determining whether they are paying minimum rates of wages or not, the amount paid for the value of items which are excluded under Section 2(h) of the Act is not be taken into consideration."

11.12 It was, therefore, submitted that the learned advocate for the petitioner has heavily relied upon the judgment of the Hon'ble Apex Court in the case of Municipal Council, Hatta Vs. Bhagat Singh and others reported in (1998) 2 SCC 443. However, the said decision has been further explained by the Hon'ble Apex Court in the aforesaid decision, therefore this Court may not follow the earlier judgment of Apex Court in Hatta's case (supra).

11.13 The learned advocate has further relied upon the

judgment in the case of Gujarat Water Supply and Sewerage Board Vs. K.D.Pandya reported in (2001) 8 SCR 301 where the Hon'ble Court has held that the paying capacity of the employer is not relevant consideration, therefore the case put forth by the Corporation is devoid of any merits. He further submitted that the judgments cited by the learned advocate for the petitioner has no relevance in this behalf. That case was regarding revision of pay scale whereas in the instant case there is no revision of pay scale and therefore the said judgment has no application at all. It was further submitted that the Corporation is totally controlled and owned by the State Government and the Corporation has demanded money for payment of overtime to the employees. Therefore the Corporation can demand the amount for payment for wages to the employees as per the award of the tribunal, therefore the Corporation has paying capacity as it is one of the subsidiaries of the State Government.

11.14 The learned advocate has further relied upon the judgment of Bombay High Court in the case of Shri Champawati Yantramag Audyogik Sahakari Sanstha Maryadit, Beed Vs. State of Maharashtra and others reported in 1994 Lab.Ind. Cases p.1115 para 4 on page 1116 the Hon'ble Court observed like this:

> "... Therefore, there is no merit in the submission made by Shri D.B.Yevatekar that the Minimum Wages Act is not applicable to the daily rated employees. Shri Shahane, appearing for respondents Nos.5 to 11 contested the claim of the petitioner that they are daily rated employees but it is not necessary for me to go into this aspect of the case since I am holding that the Minimum Wages Act is applicable to both permanent employees as well as casual workers."

11.15 The learned advocate further submitted that 142 recovery applications have been made. Therefore to say that the employees have not placed any claim for overtime wages till today is far from truth. The findings arrived at by the tribunal are just and valid and are held on principles of natural justice and even no procedural infirmity is found and no rules of natural justice are violated and findings of facts were arrived at by the tribunal on the evidence on record. In view of the same the learned advocate submitted that the petition should be dismissed with costs.

11.16 The learned advocate further submitted that at the relevant time also the pump operators are getting pay

scale under ROP Rules. He has further submitted that as per the judgment of Hon'ble Apex Court in the case of Ishwarbhai (supra), the same is not applicable as the Hon'ble Apex Court in para 7 has held as under:

> "The tube well operators concerned, even though State Government servants, are employed in schedule employment under the Local Authorities or Authorities and are consequently entitled to Minimum Wages and other benefits under the Act."

12. The learned advocate of the petitioner's rejoinder against the submissions of learned advocate for the respondent Mr.Amin.

12.1 The learned advocate for the petitioner submitted that the learned advocate for the respondent in the affidavit-in-reply as well as during the course of hearing made following submissions:

(i) The service conditions of the pump operators were not governed under the Gujarat Civil Services (Revision of Pay) Rules (para 7).

(ii) Pump operators are not given salary as per Statutory Rules. (para 16).

(iii) Pay scale of the operators was not better pay scale (para 18).

(iv) The case of Municipal Council, Hatta Vs. Bhagatsingh reported in (1998) 2 SCC 443 is over-ruled in the case of Airfreight Ltd. Vs. State of Karanataka reported in AIR 1999 SC 2459.

12.2 The aforesaid statements are absolutely false and misleading and this Court may not rely upon the same.

12.3 The learned advocate further submitted that this case was in respect of the pump operators who were not getting the Minimum Wages under the Act. In the present case, admittedly, the concerned pump operators were getting better wages, i.e. pay scales under the Statutory Rules and, therefore, the provisions of Minimum Wages Act, are not applicable. In any case, the Recovery Applications filed by the concerned pump operators for overtime wages are pending before the Labour Court for adjudication and the Labour Court will decide the same in accordance with law.

12.4 The learned advocate further submitted that the petitioner Corporation has relied upon the judgment of the Hon'ble Apex Court in the case of Municipal Council, Hatta Vs. Bhagatsingh and others (supra). As against that the learned advocate for the respondent has relied upon the case of Airfreight Ltd. Vs. State of Karnataka and others. In that case, the Hon'ble Supreme Court has considered the judgment of Municipal Council, Hatta's case (supra) and made certain observations, but the contention of the learned advocate for the respondent that the said judgment is over-ruled is not correct. In fact, Hatta's case was decided by two Judges of Hon'ble Supreme Court and Airfreight's case (supra) was also decided by two Judges of Hon'ble Supreme Court, and not only that the Hatta's case was decided by Hon'ble Justices Sujata Manohar and D.P.Wadhwa JJ., whereas, Airfreight's case was decided by Hon'ble Justice D.P.Wadhwa and M.B.Shah, JJ., when Hon'ble Justice D.P.Wadhwa is a common Judge in both the matters, earlier matter i.e. Hatta's case (supra) as well as Airfreight's case (supra), the Hon'ble Supreme Court particularly Hon'ble Justice D.P.Wadhwa is a best Judge who has able to say that this judgment is over-ruled, however, the Hon'ble Supreme Court has not stated that this judgment is over-ruled and, therefore, the learned advocate for the respondent has stated that this judgment is over-ruled is not correct in eye of law.

FINDING AND CONCLUSION:

13. The Award of the tribunal is beyond the terms of reference:

13.1 As regards aforesaid contention, it may be noted that Sec.10 provides reference of disputes to Boards, Courts or Tribunals and section 10(4) provides that in the order of reference of an industrial dispute, the tribunal under this section, the appropriate government has specified the points for dispute, the tribunal shall confine its jurisdiction. Thus the points specified in the order of reference and matters incidental thereto. Therefore this sub-section delineates the perimeter of the jurisdiction of the adjudicatory authorities under the Act. The word "jurisdiction" means authority to decide, or the "legal authority of a court to do certain things".

13.1A In the context of aforesaid sec.10(4) of the Act, the word "jurisdiction" is with respect to subject matter of dispute through the tribunal may have power to entertain the dispute. In my view, it has exceeded its

power in granting a relief which it was not authorised to grant. An industrial dispute is the creature of the statute, viz, the Industrial Disputes Act. Its jurisdiction, is therefore, confined by the Act, and it follows that the tribunal will have no jurisdiction, to adjudicate upon any dispute or lis to which the Act does not apply. The jurisdiction of the tribunal has further been limited by the provisions of sec.10(4) to confine its adjudication to the points specified in the order of reference and matters incidental thereto. Where, by reason of any limitation imposed by statute, a tribunal lacks jurisdiction to entertain any particular matter. The jurisdiction of the tribunal to adjudicate upon an industrial dispute referred to it. Once a reference has been properly made to an adjudicatory authority, the dispute has to be resolved by it.

13.1B In a reference under Sec.10(4) the tribunal is required to confine its adjudication to the points in dispute and also matters incidental thereto. The industrial tribunal is not a court of general or residuary jurisdiction but a tribunal with specific jurisdiction enumerated by the terms of the orders of reference. In other words, it is an ad hoc tribunal with ad hoc jurisdiction to determine specific industrial disputes. In other words, the tribunal has to confine itself to the pleadings and the issues arising therefrom and it is, therefore, not open to it to fly off a tangent, with disregard to the pleadings and thus, reach any conclusion that it considers as just and proper. The jurisdiction of the tribunal is limited to the dispute so referred. The tribunal cannot go beyond the terms of reference.

13.1C As regards the contention that the award given by the tribunal is beyond the terms of reference, I have considered Sec.10(4) of the Industrial Disputes Act, the reference made by the Court and also the judgment of Hon'ble Apex Court in the case of M/s.Firestone Tyre and Rubber Company India (P) Ltd. (supra), Pottery Mazdoor Panchayat (supra), Union of India Vs. Shantiram Ghosh (supra), Gorden Woodroffe Agencies (supra) and Rhone Poulenc (India) Ltd. (supra). In view of these decisions, I am of the view that the tribunal has acted beyond terms of reference and, therefore, when the tribunal has decided the same is contrary to the terms of reference then the said order is bad in law.

13.1D It may be noted that by terms of reference the tribunal gets jurisdiction to decide only on the two points i.e. to fix up 8 hours of work for workmen

working on tube wells and to grant double the rate of wages for the overtime hours beyond the normal working hours and weekly holidays, public festival holidays to be granted in this behalf.

13.2 The finding of the tribunal that workmen are entitled to benefit from 1.1.1981 i.e. retrospective effect is bad in law.

13.2A As regards another contention that the award of the tribunal awarding overtime from 1.1.1981 i.e. also bad in law on many counts.

(1) There was no claim by which the workers have claimed the amount from 1.1.1981, there was no evidence led in this behalf.

(2) No arguments were advanced before the tribunal still the tribunal decides the same.

13.2B In the statement of claim the Government referred this dispute on 26th December, 1980, and the claimant filed application on 20.4.1981. In that reference also the claimant has only prayed that the tribunal should regularise to work carry out by the employees for 8 hours and also declare weekly holidays and if they have to work on holiday, overtime to be paid. In the prayer clause also it was also not stated that if any increase in the wages, the same should be given from 1981. In absence of claim naturally the Corporation did not reply that part. Even oral and documentary evidence also did not led from what date the claim is to be given and the demand is to be specified. In view of the same, once the tribunal passed the award in 1986 and giving retrospective effect from 1981 is bad in law.

13.2B/1 It may be noted that no case was made out by the respondent herein in their statements of claim that they are entitled for the benefit from 1981. There is nothing on record to show that such a claim was put forward even in the demand raising the industrial dispute. The Industrial Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have been gone into by the Industrial Court being not the subject-matter thereof.

13.2C In view of the judgment of Calcutta High Court in the case of Workmen of Bengal Electric Lamp Works Ltd Vs.

Bengal Electric Lamp Words Ltd. and others (supra) where the Calcutta High Court has interpreted Sec.10(4) of the Industrial Disputes Act and held that the expression and matters incidental thereto appearing in Sec.10(4) of the Act includes incidental matters. Retrospective matters are not incidental matters. These expressions in the section are to be read prospectively unless the actual terms of reference indicate either expressly or by the most compelling and necessary implication any other conclusion giving jurisdiction to the tribunal to pass orders retrospectively. The said judgment of Calcutta High Court squarely applies in this case and in view of the same I hold that the order of the tribunal giving effect retrospectively from 1981 is bad in law. The tribunal has held that in view of provisions of Minimum Wages Act and the Rules, the employees of the Corporation are entitled to wages as per the provisions of Minimum Wages Act and the Rules.

13.2D It may be noted that the learned advocate for the respondent has stated that when the Government has made a reference under Sec.10(4) of the Act, the said section provides that the Labour Court or the Tribunal, as the case may be, shall confine its jurisdiction to those points and matter incidental thereto. It was submitted that when the tribunal has decided to give effect with retrospective effect, it can cover under the matter incidental thereto.

13.2E It may be noted that the word "incidental" means according to Webster's New World Dictionary: "Happening or likely to happen as a result of or in connection with something more important, being an incident; casual, hence, secondary or minor, but usually associated.

13.2F The aforesaid definition has been considered by the Hon'ble Supreme Court and thereafter the Hon'ble Supreme Court has observed as under:

> "something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct."
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> {Re: Delhi Cloth & General Mills Co. Ltd Vs. Their Workmen and others reported in (1967) 1 LLJ 423, relevant on page 427 (SC)}

13.2G In view of the aforesaid discussion, even the contention of the respondent that in view of Sec.10(4) of the Act which provides that the tribunal has incidental power to decide the same, and in that view of the matter, the tribunal has power to grant retrospective effect cannot be accepted because giving retrospective effect is not incidental or a minor matter connected with the main matter. There is no connection in this dispute with the main dispute which has been raised in the main matter, therefore the said contention of the learned advocate for the respondent is also rejected in this behalf.

13.3 The award otherwise bad in law because award does not give any reasons:

13.3A Over and above even if it is claimed and argued the tribunal has awarded the same without giving any reasons. In my view, if the quasi judicial authority gives any finding without giving any reasons, the same is bad in law.

13.3B "Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reason, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable."

"Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed : (ALL ER p.1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived. Reasons substitute subjectively by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least

sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

{Re: Judgment of the Hon'ble Apex Court in the case of Cyril Lasrado (Dead) by LRS. and others v. Juliana Maria Lasrado and another reported in (2004) 7 SCC 431 particularly para 11 and 12}

13.3C I have already quoted the two judgments of the Hon'ble Apex Court in this behalf. I have also referred to and rely upon the following authorities for giving reasons:

(1) The Book of Administrative Law by Hon'ble & Respected C.K.Thakkar (Hon'ble Judge, Supreme Court of India) particularly Chapter on Natural Justice which starts from page 158 particularly where the learned author on page 195 stated that speaking orders or reasoned decisions means "an order speaking for itself". In other words, very order must contain reasons in support of it. Giving of reasons in support of an order is considered to be the third principle of natural justice.

(2) Even the Administrative Law, Sixth Edition by Dr.S.P.Sathe, on page 206, the learned author has stated that the requirement of a reasoned decision prevents the abuse of administrative discretion and ensures that the decision is impartial, objective and in public interest. The courts insist on the administrative authorities to give reasons for their decisions so that such decisions can be reviewed meaningfully.

(3) Even the book of Administrative Law by I.P.Massey (Sixth Edition 2005) on page 214 the learned author has stated that in order to maintain and uphold the Rule of Law it is necessary that in all administrative and quasi-judicial actions the requirement of a `reasoned decision' must be implied unless expressly excluded.

13.3D I further rely upon the following observations of Chief Justice Mukharji, The New Jurisprudence, p.434 which reads as follows:

"The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reason. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reason. Reason, therefore, is the soul and spirit of a good judgment."

13.3E In my view, thus the judgment is the most important document for the parties as well as the Judge. Reasons assume importance when an appeal or revision is filed or it is challenged before higher forum against the judgment. So far as the tribunal is concerned, the reasons are very important. They indicate the working of it's mind, it's approach, it's grasp of the questions of fact and law involved in the case and the depth of it's knowledge of law. In short, the judgment reflects the personality of the Judge who is presiding the tribunal and, therefore, it is necessary that it should be written with care and after mature reflection. The tribunal must therefore give cogent and convincing reasons in support of the judgment. As the tribunal failed to give any reasons, in my view the order of the authority is bad in law on that count also.

13.3F The expression 'judgment' is not defined under the provisions of Industrial Law but as defined in the Code of Civil Procedure, 1908, judgment is "the statement given by the Judge on the grounds of a decree or order". {Re: Sec.2(9) of the CPC}.

13.3G In the words of Vivian Bose, J., a judgment may be said to be "the final decision of the Court intimated to the parties to the world at large by formal 'pronouncement' or 'delivery' in open Court."

{Re: Surendra Singh v. State of U.P., AIR 1954 SC 194(196) : 1954 SCR 330}

13.3H The Rationale for reasoned decision-making - Why Tribunal - a quasi-judicial body should give reason in support of its findings.

13.3H/1 Several justifications have been urged for the need to give reasons for administrative decisions. In the first place, a duty to give reasons entails a duty to rationalise the decision. Reasons therefore help to structure the exercise of discretion, and the necessity of explaining why a decision is reached requires one to address one's mind to the relevant factors which ought to be taken into account. Secondly, furnishing reasons

satisfies an important desire on the part of the affected individuals to know why a decision was reached. Basic fairness requires that those in authority over others should tell them why they are subject to some liability or have been refused some benefit. Thirdly, rational criticism of a decision may only be made when the reasons for it are known. This subjects the administration to public scrutiny and it also provides an important basis for appeal or review. Furthermore, if reasons are assigned, they can provide guidance to others on the administrator's likely future decisions, and so deter applications which would be unsuccessful. It may also "protect the body from unjustified challenges, because those adversely affected are more likely to accept a decision if they know why it has been taken." Above all, giving of reasons enables courts and tribunals to effectively and meaningfully exercise their appellate or supervisory powers.

{Re: Article of Soli Sorabjee - The Duty to Give Reasons in Administrative Law, Book of Democracy Human Rights and The Rule of Law by Nani Palkhivala, page 94-95}

13.H/2 The learned Author further observed on page 105 as under:

"The general trend is in favour of the 'right to reasons' in administrative determinations. It is increasingly realised that it is conducive to good governance that reasons be given and that omission to do so can result in injustice. This is a salutray development. Secrecy is the main bulwark of inefficient and corrupt administration. Disclosure of reasons makes a wholesome dent in the veil of secrecy. Transparency is the hallmark of honest and efficient administration. Sunlight is a good disinfectant. The effort should be to spread the sunlight in all spheres of administration."

{Re: Article of Soli Sorabjee - The Duty to Give Reasons in Administrative Law, Book of Democracy Human Rights and The Rule of Law by Nani Palkhivala, page 105}

13.3H/3 In view of the judgment of the Hon'ble Apex Court in Cyril Lasrado (supra) and the commentaries on Administrative Law by Hon'ble & Respected Mr.Justice C.K.Thakkar, Dr.S.P.Sathe and I.P.Massey and also the observations of Hon'ble Chief Justice Mukharji and even the definition of judgment contained in CPC and further

decisions and rationale given for which I have stated, in my view, the tribunal - a quasi-judicial authority ought to have give reasons as to why the tribunal has given retrospective effect of the demand of workers particularly when there is no such reference, no such claim, no reply filed by Corporation, no evidence led by parties either and still the tribunal decided the same without giving any reasons. In view of the same, the order of the tribunal giving benefit to the workers with retrospective effect without giving any reasons is bad in law.

13.4 That the finding of the tribunal that the provisions of Minimum Wages Act and the Rules are applicable and therefore granting overtime is bad in law:

13.4A It may be noted that it is true that as per Sec.27 of the Act the State Government has power to add kind of industry in schedule, and pursuant to that, the industry of petitioner corporation has been included. However, as per Sec.3 of the Minimum Wages Act, which provides that appropriate government shall in a manner provided to fix the minimum rates of wages payable to the employees employed in an employment specified in Part I and Part II of the Schedule and in an employment added to either part by notification under Sec.27 of the Act. The proviso to the said section also provides certain power to the Government regarding issuance of notification. So unless and until the notification under Sec.3 of the Act is issued, the liability of Minimum Wages Act cannot be fastened on the Corporation.

13.4B It may be noted that even the tribunal has also given finding that till date the notification under Sec.3 of the Act has not been issued and, therefore, minimum rates of wages to the workmen have not been fixed by the Corporation, and therefore, the workmen cannot claim wages as per the provisions of the Minimum Wages Act. I see considerable force in the said contention, and when the tribunal has already decided the same and the union has not filed petition challenging the same, the said finding is binding on the workmen and the workmen union cannot challenge the said finding in the present proceedings in this behalf.

13.4C I have also considered the judgment of the Hon'ble Apex Court in the case of Municipal Council, Hatta Vs. Bhagat Singh (supra). In view of the provisions of Sec.14 of the Act, and in view of that Hatta's case (supra), the provisions of Minimum Wages Act will not apply and the findings of the tribunal that

provisions of Minimum Wages Act and the Rules are errorneous and contrary to facts and law of the case and, therefore, the findings of the tribunal is bad in law. The judgments cited by the learned advocate for the respondent in the case of Airfreight's case (supra) will not help the respondent. In that case, the Hon'ble Supreme Court has explained the said decision but the same was not over-ruled and, therefore, the contention of the learned advocate for the respondent that the judgment of Hatta's case (supra) is over-ruled is cannot be accepted on the ground that earlier Hatta's case (supra) was also delivered by two Bench Judges of Hon'ble Supreme Court, whereas subsequent judgment was also delivered by two Bench Judges of Hon'ble Supreme Court and, therefore, in any view of the matter the subsequent development is not over-ruled particularly Hon'ble Justice D.P.Wadhwa who is a common Judge in these two judgments.

13.4D In Jaydip Industries Vs. Workmen i.e. (1972) 1 LLJ 244 (SC), during the pendency of an industrial dispute relating to wages, before the industrial tribunal, the Government of Maharashtra fixed the minimum rates of wages for the employees employed in the scheduled employments, including paper and paper board manufacturing industry, under sec.3 of the Minimum Wages Act 1948, by a notification, published in the Maharashtra Gazette, dated 4th August, 1966. As a result of the notification, the wages of the workmen concerned were raised with effect from October 1966. Subsequently, the tribunal found that the concern was not financially stable. However, on the basis of the minimum rates of wages fixed by it in awards, in case of other similar industries in the region, it revised the rates of wages for the workmen employed in the concern in question and fixed the minimum wages at higher rates than specified in the notification published by the government. The award of the tribunal was challenged before the Supreme Court, by the employer, contending that once the appropriate government had fixed the minimum rate of wages in the employment under sec.3 of the Act, it was not open to the tribunal to fix higher rates of wages as minimum wages, and therefore, the rates of wages fixed by the tribunal were not minimum wages, but were fair wages or adequate wages, bordering on fair wages and so, the financial capacity of the employer to bear the additional burden should have been taken into account. However, in view of sec.3(2A) of the Minimum Wages Act, the Hon'ble Apex Court observed that even after the fixation of the minimum rates of wages, by the appropriate government, under sec.3 of the Act, it is open to the industrial tribunal adjudicating upon an industrial dispute relating

to wages payable to the employees in a scheduled employment, to fix the minimum wages at higher or lower rates, if the dispute was pending at the time of the fixation of the minimum wages, under sec.3 of the Act. In other words, the tribunal was not bound by the rates of wages fixed by the government under the provisions of sec.3 and could fix rates of minimum wages in its award. It was, therefore, held that the tribunal was justified in fixing rates of minimum wages to be paid to the workmen concerned in the dispute, at figures higher than those fixed by the government.

13.4E It may be noted that in this case when the industrial adjudication was pending before the tribunal, the Government of Maharashtra issued a notification fixing the minimum wages, however, the tribunal on proper adjudication of the matter decided to give wages more than the minimum wages fixed by the Government. When the aforesaid order was challenged by the parties before the Hon'ble Supreme Court, the Hon'ble Supreme Court observed which I have referred in my earlier paragraph. In view of this, this decision has a peculiar facts and circumstances of the case and facts in that case is not present before this case. In our case the Government has not issued any notification under the Minimum Wages Act, however, the Corporation in its own giving benefit of revision of pay rules which is much higher minimum wages and, therefore, the applicability of Minimum Wages Act by the tribunal is not correct and the aforesaid decision of Jaydip Industry's case (supra) relied by the respondent does not help the respondent's case and that decision turns into its peculiar facts and circumstances of the case.

13.5 The award of the tribunal is otherwise bad in law because the tribunal has not considered the financial position of the Corporation:

13.5A It may be noted that in this case the tribunal has given ward with retrospective effect i.e. from 1.1.1981, the tribunal failed to determine whether the financial capacity of the petitioner Corporation is adequate enough to bear the additional burden arising out of the award passed by the tribunal. It has been further shown that the burden arising out of the award is crushing, unduly heavy and oppressive as is evident from the staggering figure of the additional burden to the tune of Rs.16.00 crores.

13.5B It may be stated that the recurring annual burden comes to the tune of Rs.3.00 crores. The tribunal has

not cared to enquire as to what will be the total impact of financial burden arising out of the award. The failure of tribunal to adopt such a course, ignoring such a vital fact, constitutes serious infirmity in his approach in the question of granting arrears of wages. It may be noted that the petitioner Corporation has been continuously making loss during the last five years even after receipt of subsidy from the Government. The annual loss before receipt of Government subsidy varies from about Rs.278.10 lakhs to Rs.710.80 lakhs. Whereas the annual loss after receipt of Government subsidy varies from about Rs.78 lakhs to Rs.384 lakhs. The additional accumulated burden of Rs.16 crores and annual recurring burden of Rs.3.00 crores will further aggravate and enhance the financial stringency, hampering the working of the respondent corporation.

13.5C The learned advocate for the petitioner has also pointed out that if the final relief is granted then huge liability being incurred on behalf of the Corporation. While granting such relief, the tribunal ought to have consider the financial position of the Corporation or even in the case of the Government also. In this case I accept the argument of learned advocate for the Corporation as well as learned AGP for the State Government that in view of the judgment of the Hon'ble Apex Court in the case of A.K.Bindal and another (supra) and judgment of this Court in the case of Gujarat State Financial Corporation (supra), the financial position of the State Government has to be considered, and as the same has not been considered, to that extent, the order of the tribunal is also bad in law.

13.5D I have considered the judgment of Bindal's case (supra), and as per said decision, employees under public sector enterprises (in this case hereinafter referred to as employees of the corporation) cannot be treated as State Government employees, and if the Corporation does not have enough fund, the industrial court cannot give any relief by way of additional pay/revision of pay and emoluments in this behalf.

13.5E I have considered the submissions of Mr.Amin for the respondent. I have also considered the various decisions cited by him in this behalf. As regards judgment of Hon'ble Apex Court in the case of Patel Ishwarbhai (supra), it may be noted that the said decision was applicable to the former employees of the Government and thereafter which has been transferred to the Panchayat. However, we are concerned with the employees of the Corporation who have now serving under

the Corporation which are governed by ROP Rules, and therefore the said decision is not applicable to the present facts and circumstances of the case. The other two judgments cited by the learned advocate for the respondent does not help the case of the respondent.

13.5F It may be noted that the following observations of the Hon'ble Supreme Court is aptly appropriate in this behalf.

> "This, however, does not mean that an industrial court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by this Court."
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> {Re: Wanchoo J, New Maneckchowk Spinning & Weaving Co. Ltd. v. Textile Labour Association [1961] I LLJ 521, 526 (SC) : AIR 1961 SC p.867 particularly para 6 on page 870}.

13.6 Last contention:

13.6A As regarding contention of Mr.Chauhan in which it has been stated that if petitioner Corporation are governed by rules enacted under the provisions of Article 309 of the Constitution of India, the provisions of Industrial Disputes Act does not apply, I find considerable force in the said judgment particularly the Division Bench judgment of this Court in the case of State of Gujarat Vs. Saurashtra Mazdoor Sangh (supra) particularly para 7.2, 7.3 and 7.4 of the said judgment which I have referred to earlier in this behalf.

13.6B It may be noted that this point was not urged by the Corporation before the tribunal and therefore the union has not replied to this part and the tribunal had no opportunity to decide the said point in this behalf. The petition is filed under Article 227 of the Constitution of India, and therefore this Court is of the view of that it is not proper to decide the point which is raised for the first time before this Court. In view of the same, this Court do not express any opinion on the point which has been raised first time before this Court

in this matter, though the same is covered by the Division Bench judgment of this Court.

14. This matter was heard somewhere in December 2004 for final hearing. The matter was substantially heard, however, because of some personal inconvenience of Mr.Amin, the matter could not be finished. Thereafter the roster was changed and both the learned advocates requested this Court to treat this matter as part-heard. In view of the same the office was directed to obtain the order of Hon'ble the Chief Justice and Hon'ble the Chief Justice has also passed the order to treat as part-heard and to kept the matter before this Court somewhere in January 2005. That is how the matter is heard and finally disposed of in this behalf. Before I conclude, I am extremely grateful to learned advocates Mr.Chauhan, Mr.Amin as well as Ms.Shruti Trivedi, learned AGP who have rendered very valuable assistance to dispose of this difficult matter with voluminous record in this behalf.

15. In view of the same, the judgment and award dated 4th March, 1986, passed by the Industrial Tribunal, Ahmedabad in Reference (I.T.) No.693 of 1980 is quashed and set aside on the findings and conclusion discussed above in this behalf. In view of the same, the petition is allowed. Rule is made absolute with no order as to costs.

(K.M. Mehta, J.)

syed/